



# PUBLIC NOTICE

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COMMISSION APPLIES "PERMIT BUT DISCLOSE" EX PARTE RULES TO FORMAL COMPLAINT FILED BY BEEHIVE TELEPHONE, INC. AGAINST THE BELL OPERATING COMPANIES (E-94-57)

On April 28, 1993, the Commission's Common Carrier Bureau (Bureau) initiated an investigation, CC Docket No. 93-129, into 47 tariffs filed by various local exchange carriers (LECs) that govern the terms and conditions on which customers may obtain 800 database access services. The investigation also includes issues concerning the Service Management System (SMS) Tariff,<sup>1</sup> which was filed jointly by Ameritech, Bell Atlantic, BellSouth, NYNEX, Pacific Bell, Nevada Bell, Southwestern Bell and US West. It governs access by so-called "Responsible Organizations" to the SMS tariff.<sup>2</sup> See 800 Data Base Access Tariffs and the 800 Service Management System Tariff, Order, 8 FCC Rcd 3242 (Com.Car.Bur. 1993) and Order Designating Issues for Investigation, 8 FCC Rcd 5132 (Com.Car.Bur. 1993). Pursuant to Subsection 1.1206(b)(6) of the Commission's Rules, 47 C.F.R. § 1.1206(b)(6), the investigation into the 800 data base tariffs and the SMS tariff is a non-restricted proceeding. In conjunction with the investigation, and consistent with the Commission's ex parte rules providing for disclosure of permissible presentations, the staff has been engaged in discussions with certain parties for the purpose of obtaining information and exploring possible resolutions of the issues raised in the investigation. Summaries of new information provided by the

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<sup>1</sup> The Service Management System is a centralized database that contains all of the customer records that ultimately control the routing of 800 traffic to the appropriate interexchange carrier and end-user.

<sup>2</sup> Responsible Organizations or "Resporgs" are the only entities authorized to access the SMS database to enter or change customer records for 800 numbers. LECs, interexchange carriers or qualified independent entities can be Resporgs.

parties in connection with these discussions are contained in the docket file.

On March 10, 1994, Beehive Telephone, Inc. and Beehive Telephone of Nevada, Inc. filed a formal complaint, E-94-57, against the Bell Operating Companies challenging the lawfulness of their joint SMS tariff. The tariff investigation and formal complaint involve common issues relating to the SMS tariff. Unlike the pending tariff investigation, however, the formal complaint proceeding has been restricted as specified in Subsection 1.1208(c)(1)(i)(B) of the Rules, 47 C.F.R. § 1.1208(c)(1)(i)(B).

We believe that the public interest in resolving the issues raised by the tariff investigation expeditiously would best be served by ensuring that the investigation and related discussions continue with a minimum of disruption during the pendency of the formal complaint. Because the tariff and complaint proceedings involve common issues, however, we believe that this interest must be balanced against the parties' interest in ensuring that decisions on the common issues are based upon a record available to all interested parties. In balancing these interests, pursuant to Section 1.1200(a) of the Rules, 47 C.F.R. § 1.1200(a),<sup>3</sup> the Bureau finds that the public interest would be served by making applicable to the formal complaint proceeding the "permit but disclose" ex parte rules applicable to nonrestricted proceedings. These rules permit interested parties to make ex parte presentations to Commission decisionmakers. Written ex parte communications must be filed with the Secretary while oral ex parte communications must be summarized in writing and also filed with the Secretary (with a copy to the person or persons with whom the communication was made). All ex parte filings should reference the appropriate file number or numbers.<sup>4</sup>

Consistent with this Public Notice, all parties making ex parte presentations on the SMS tariff investigation shall file any written ex parte presentations and summaries of any oral ex parte presentations in both the investigation, CC Docket No. 93-129, and the formal complaint proceeding, File No. E-94-57. The parties to the complaint proceeding may, at their option, incorporate into the record of the complaint proceeding ex parte presentations that occurred in the tariff investigation after the filing of the complaint but before the issuance of this Public Notice, by filing an original plus two copies of the written communication or summary of any oral communication in accordance with Section 1.735 of the Rules pertaining to formal complaints, 47 C.F.R. § 1.735.

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<sup>3</sup> Section 1.1200(a) permits the Commission to adopt modified or more stringent ex parte procedures in particular proceedings if the public interest so requires.

<sup>4</sup> See, e.g., Public Notice, Commission Applies "Permit But Disclose" Ex Parte Rules to TRAC Complaint Proceeding, DA 88-1244 (August 8, 1988).

Copies of the formal complaint and any subsequently filed documents in both of these proceedings, including ex parte materials, may be obtained from International Transcription Service, Room 246, 1919 M Street, N.W., Washington, D.C. or at 1250 23rd Street, N.W., Plaza Level, Washington, D.C.

For further information, contact John Adams at (202) 632-4887 regarding the formal complaint proceeding or Thomas G. David at (202) 632-6917 regarding the tariff investigation.

By the Acting Chief, Enforcement Division and the Acting Chief, Tariff Division.

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